IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.5447 OF 2003
and
WPMP.NOs.8360 & 8361 OF 2003

S. Prem Giri,
No.124, Mannarsamy Koil Street,
Royapuram, Chennai 13. .. Petitioner

-Vs-

1. The Commissioner of Customs,
Custom House,
36, Rajaji Salai,
Chennai 600 001.

2. The Customs Excise and Gold
(Control) Appellate Tribunal,
South Zone Bench,
Shastri Bhawan Annexure,
Chennai 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein

For Petitioner : Mr.M. Ajmeer Ali

For Respondent-1 : Mr.A. Kalaisevan,
ACGSC
Respondent-2 : Mr.S.M. Deenadayalan
ACGSC

:J U D G M E N T

The petitioner has prayed for issuing Writ of Certiorarified Mandamus to quash the order of the second respondent dated 24.9.2002 and directing the first respondent to pay the interest of Rs.1,47,798/-.

2. The facts giving rise to the present writ petition are as follows:
On 27.11.1989 the authorities under the respondent had seized Indian Currency Notes worth Rs.4,25,000/-. Subsequently, the Commissioner of Customs passed an order for confiscation of gold bars and currency notes and imposed a

penalty of Rs.1,00,000/-. The petitioner carried the matter in appeal. By order dated 17.1.2000, the Appellate Tribunal while upholding the direction regarding confiscation of gold bar and imposition of penalty of Rs.1,00,00/-, directed to return the currency notes worth of Rs.4,25,000/-. During pendency of the appeal, the petitioner had made a pre-deposit of Rs.25,000/-. Subsequently the petitioner filed Miscellaneous Application No.104/2000 in C.A.No.2 20/91 before the Tribunal praying for implementation of the final order dated 17.1.2000 and to return the amount along with the interest at the rate of 24% from the date of seizure. On 23.11.2000, the Appellate Tribunal passed an order directing the authorities to return the amount of Rs.4,25,000/- along with interest @ 12% per annum as has been directed in the cited judgment within 1 month from the date of receipt of this order. Subsequently, the Department after adjusting the pre-deposit amount of Rs.25,000/- towards penalty and further adjusting the balance sum of Rs.75,000/- payable towards penalty, refunded a sum of Rs.3,50,000/- along with a further sum of Rs.33,278/- towards interest. Subsequently a petition was filed by the petitioner contending that the interest should be calculated at the rate of 12% per annum from the date of seizure of the currency notes and not from the date when the amount was deposited by the Department in the treasury. The aforesaid contention was rejected by the Tribunal on 24.9.2 002, which held that the interest amount has been rightly calculated.

3. During pendency of the writ petition, petitions to amend the prayer in the writ petition and to implead the proposed second respondent has been filed and they are allowed.

4. A perusal of various orders indicate that at the time of dismissal of the appeal there was a direction for refund of Rs.4,50,000/-, but there was no specific direction that such amount should be refunded with interest from the date of seizure. However, on the basis of the subsequent application, the Tribunal had directed for payment of the amount along with interest at the rate of 12% per annum. It must be construed that at least from the date of disposal of the appeal interest on Rs.4,25,000/- should be calculated. The liability to pay the amount arose on the date when the appellate order was passed if not earlier and there was no justification for the respondents to retain the money thereafter.

5. Learned counsel for the petitioner has submitted that interest should be calculated from the date of deposit had been made. For the aforesaid reason, he placed reliance upon the decision reported in 19 97 (95) E.L.T. 3 (S.C.) (KUIL FIREWORKS INDUSTRIES v. COLLECTOR OF CENTRAL EXCISE). That case related to the case of return of predeposit made and is not comparable to the present case, where the amount has been seized and directed to be confiscated. The right to get back the money only flows from the appellate order. Therefore, according to me, the interest is payable from the date of the appellate order.

6. For the aforesaid reasons, the writ petition is allowed in part and the respondents are directed to calculate the interest at the rate of 12% per annum on Rs.3,50,000/- from the date of disposal of the appeal till the date of payment order and if any further amount is found due, such amount

should be paid within a period of one month from the date of the present order. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

dpk

To
1. The Commissioner of Customs,
Custom House,
36, Rajaji Salai, Chennai 600 001.

2. The Customs Excise and Gold
(Control) Appellate Tribunal,
South Zone Bench, Shastri Bhawan Annexure,
Chennai 600 006.